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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

**Before the**
**FEDERAL COMMUNICATIONS COMMISSION**
**Washington, D.C.**

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|---|---|---|
| Implementation of Sections of the Cable Television Consumer Protection and Competition Act of 1992 | ) | MM Docket No. 92-266 |
| Rate Regulation | ) | |

**COMMENTS OF CONTINENTAL CABLEVISION, INC.**
**ON THE THIRD NOTICE OF PROPOSED RULEMAKING**

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## SUMMARY

Continental Cablevision urges the Commission not to condition cost-of-service cases for one tier upon a requirement for cost-of-service cases on all tiers. To do so creates a needless and costly proliferation of cost-of-service showings when there are ready alternatives to prevent gaming and artificially inflated returns for some regulated tiers. Instead, Continental recommends that the Commission require operators to submit cost-of-service showings which conform to FCC-promulgated cost allocation rules and which conform to an overall authorized rate of return from all regulated tiers.

Whatever "coordination" is required between local governments and the FCC, Continental submits that the Commission may not abdicate its ratemaking responsibilities by deferring to municipal decisions on fundamental ratemaking issues. The Commission has statutory obligations to promote the development of cable television technology, to judge the reasonableness of rates for cable programming services, and to avoid irrational and arbitrary ratemaking decisions. These obligations require that it make binding determinations regarding all significant policy issues involved in cost-of-service showings, including showings presented to local franchising authorities. Although Continental has worked closely over the years with local franchising authorities, in our experience those authorities lack both the

national scope of the Commission's policy judgments and its decades of practical experience in cost-of-service ratemaking. As a result, local pressures may force decisions about major ratemaking issues in a manner that disserves the objectives of the Cable Act.

Continental is concerned that the Commission's suggested methodology for increasing rates to cover newly added channels will not provide sufficient incentives to add channels or invest in rebuilds. That methodology would require basic service customers who receive no new services to pay for the expenses of new programming received only by subscribers to cable programming service tiers. After witnessing the reaction to September 1 restructurings, Continental does not believe that basic service rates should be further adjusted to finance additions to cable programming service tiers. Apart from disturbing policy consequences, the Commission's proposal does not properly implement a "tier neutral" approach because not all basic tier subscribers choose not to subscribe to all cable programming service tiers. The methodology for compensation therefore results in a shortfall.

Accordingly, Continental recommends a modified methodology which would adjust only the rates for the tier affected by changes in the number of programming services. In addition, cable operators should be permitted to supplement their showing of changed programming costs with a streamlined showing of the cost of creating additional system capacity, and to include those costs in their new per-channel rates. Otherwise, the Commission's proposed methodology will have the unintended effect of discouraging the launch of new services and system upgrades.

Continental also recommends that the Commission allow cable operators to treat the costs of system upgrades required by local franchising authorities as "external" costs under the Commission's rules. This approach will create sound incentives for franchising authorities to require only upgrades for which subscribers are willing to pay. The Commission should also rule that the cost of required upgrades must be recovered over the shorter of the economic life of the newly placed plant or the remaining life of the franchise. Allowing local franchising authorities to dictate different -- and presumably longer -- cost recovery periods for upgrades would create incentives, at odds with national policy, which effectively deny recovery of the costs.

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**COMMENTS OF CONTINENTAL CABLEVISION, INC.**
**ON THE THIRD NOTICE OF PROPOSED RULEMAKING**

## INTRODUCTION

Continental Cablevision, Inc. ("Continental") submits these comments in response to the Third Notice of Proposed Rulemaking ("Third NPRM") issued in this matter on August 27, 1993. Continental is the third largest multiple cable system operator in the United States. It serves nearly 2.9 million basic subscribers in 600 communities in 16 states, or about 5.5 percent of the nation's cable television households.

## I. CABLE OPERATORS SHOULD NOT BE COMPELLED TO PURSUE COST OF SERVICE CASES IN TWO JURISDICTIONS IN ORDER TO JUSTIFY RATES ON ONE REGULATED TIER UNDER THE COST OF SERVICE APPROACH

The Third NPRM tentatively concludes that a cable operator who defends rates on one tier using either a cost-of-service or benchmark approach must use the same approach to justify rates on all other tiers. (¶¶ 147-48).

As Continental has previously demonstrated, "tier neutrality" is not cost based. Continental's actual costs for cable programming services (CPS) are greater, channel for channel, than the costs of basic service. Likewise, marketing costs are more directly attributable to cable programming service tiers than to basic service.[1/] It is not logical to insist upon cost-of-service cases for basic tiers before local franchising authorities merely because costs of CPS tiers are high enough to justify such a case at the Commission. Insisting upon multiple cost-of-service cases would also undermine an operator's ability to charge lower basic rates -- which is of increasing interest to Congress -- if the franchising authority and the operator are burdened with (and forced to recover) the local administrative costs of defending higher COS-based basic rates. It would also impose needless procedural burdens on the Commission and local franchising authorities.

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1/ *See* Comments of Continental in MM Docket 93-215, August 25, 1993 at 78.

The Commission may fear that a cost-of-service rate on one tier and a benchmark rate on the other will create a <u>higher</u> return than would be authorized by COS or benchmark alone. Indeed, the sole basis for the Commission's tentative conclusion to insist on "tier neutrality" in cost-of-service showings is a concern about "gaming" the regulatory scheme established by the Cable Act. Continental believes that the only kind of "gaming" that might occur in this context relates to a system operator's allocation of common costs among regulated tiers. Specifically, the Commission might be concerned that a cable operator would misallocate costs to one tier, recover them on a cost-of-service showing, then reap excessive profits on the remaining tier simply by holding rates at benchmark levels. Continental submits that such fears are misplaced.

Continental's own experience is that there are few cases where broadcast basic rates that are reasonable under the benchmarks might not survive scrutiny under cost-of-service principles. In virtually every case where we have computed preliminary cost-of-service rates for one tier, the cost of service rate for the companion tier is also above benchmark levels. In addition, the overwhelming majority of investment used to deliver both basic and CPS tiers is "joint and common." It will be a rare case indeed where above-benchmark rates can be justified under cost-of-service principles for only one tier. This provides added assurance to the Commission that no inappropriate "gaming" of the system will occur. If this is not true in every case, the additional scrutiny described below will provide the necessary information to prevent unwarranted returns. Those limited exceptions should not justify the Commission's proposal to require cost-of-service showings on all tiers in every instance with all of the attendant costs.

Continental believes there is a ready solution which does not require a proliferation of the very cost-of-service proceedings that benchmarking was intended to minimize. The Commission should adopt reasonable rules for allocating costs among tiers,[2/] and require those rules to be followed for all cost-of-service showings, whether made to the Commission in connection with the CPS tier or to a local franchising authority in connection with the basic tier. In addition, as Continental has previously proposed,[3/] the Commission could require any operator who elects cost-of-service with respect to a CPS tier to demonstrate that its overall return for basic and cable programming service is reasonable. An operator's cost-of-service showing would necessarily show an allocation of costs among tiers and overall return from regulated services. This would provide the Commission with all the information needed to ensure full

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2/ Continental has suggested such rules in its Comments in MM Docket 93-215, August 25, 1993 at 73-81.

3/ Comments in MM Docket 93-215, August 25, 1993 at 78-79.

compliance without the need for a redundant cost-of-service case before another jurisdiction.

## II. THE COMMISSION SHOULD MAKE BINDING POLICY DETERMINATIONS ON ALL MAJOR ISSUES OF RATEMAKING POLICY

The Commission also seeks comment on how to coordinate cost-of-service showings for the same system at both the local and federal level, and on whether the Commission should give deference to ratemaking decisions made by local franchising authorities. (¶ 152). Continental submits that in order to effectively discharge its obligations under the Communications Act, and to avoid arbitrary and irrational ratemaking results, the Commission itself must decide all major policy questions involved in cable ratemaking.

### A. The Commission's Statutory Obligations and National Perspective Are Unmatched by Local Franchising Authorities

The Communications Act obliges the Commission to promote the development of new technologies and services, and cable television technology in particular. See 47 U.S.C. §§ 157, 521; 1992 Cable Act, § 2(b). Moreover, the Commission itself has recognized that decisions on any number of ratemaking issues can have significant effects on cable operators' financial status. These include items such as cost allocations, rules for calculating rate base, useful lives of equipment, amortization schedules for other capital, the allowed rate of return, and the capital structure to use for ratemaking purposes. Resolution of these issues directly affects the operators' ability to upgrade their systems and offer existing services with enhanced quality as well as new and innovative services using new technologies. Clearly, decisions on major ratemaking issues directly affect the achievement of the Commission's statutory mandate.

In these circumstances, the Commission may not lawfully delegate decisions on major ratemaking policy questions to a multiplicity of local entities that do not share the Commission's statutory obligations. Most local franchising authorities will necessarily be primarily concerned with lower short-term basic cable rates. Although it is a legitimate concern, from the prespective of the nation's overall telecommunications policy -- for which the Commission is responsible -- it is one to be balanced against growth in communications, new technologies, improved service and availability of service in rural areas. Unchecked, resolution of major ratemaking issues in hundreds of local communities could balkanize the industry as system operators struggle to conform their accounting and operating practices to divergent local ratemaking requirements.

Deference to the Commission is particularly appropriate quite apart from the Commission's national perspective on issues affecting cable ratemaking. Although Continental has worked closely over the years with local franchising authorities, in our experience local franchising authorities lack the resources and the practical experience needed to assess major cost-of-service policy questions. Cost-of-service ratemaking is an extremely complex process, as to which this Commission has a wealth of knowledge after nearly sixty years of experience regulating telephone companies under Title II. One key aspect of the Commission's experience is knowing which parts of traditional Title II cost-of-service regulation can reasonably be applied to the cable industry, and which parts cannot. It would be arbitrary and irrational for this Commission to ignore that experience by allowing local franchising authorities -- who lack it -- to have the final word on major ratemaking questions.

The Commission is familiar with the impact of acceding to regulatory incentives of this type. Under Title II regulation, the Commission yielded in the 1960s and 1970s to pressures to allocate an unduly high proportion of the costs of telephone plant used to provide both interstate and intrastate service to the interstate jurisdiction. The problem was solved only with a major revision in the Commission's approach to this aspect of the separations process, and the implementation of the controversial federal Subscriber Line Charge. MTS and WATS Market Structure, Phase I, 93 F.C.C.2d 241 (1983). Delegating major cable ratemaking policy questions to hundreds -- or thousands -- of divergent local franchising authorities, each pursuing its inherently local and occasionally parochial interests, is an invitation to the creation of similar problems in the cable communications industry.

Only the Commission has the statutory obligation and the national breadth of view to properly balance legitimate concerns about current rate levels against such concerns as the need to encourage continued expansion and improvements in the telecommunications infrastructure. As a result, only the Commission can decide the key policy questions that will affect individual rate determinations for each cable system.

### B. The Commission May Not Abdicate Its Statutory Duty to Judge the Reasonableness of CPS Rates, Including Cost-Based CPS Rates

Continental believes that it would be inappropriate to defer to local authorities for an additional statutory reason. Under Section 623 of the Cable Act, the Commission retains exclusive authority to regulate rates for cable programming services, and to entertain appeals from basic rate decisions by local franchising authorities. The Commission, therefore has an obligation to exercise its <u>own</u> expert judgment as to the reasonableness of those rates, including their cost-of-service justifications. It would be inconsistent with that statutory obligation for the Commission to "defer" to cost-of-service determinations made by local franchising authorities. To the contrary, for the reasons described above, "deference" should run the other way.

### C. Local Franchising Authorities Should Defer to the Commission on any Major Ratemaking Policy Question

Continental recommends a two-fold solution to meld national telecommunications policy with local ratemaking authority. First, to the maximum extent possible, the Commission should specify the approaches that it will follow in adjudicating cost-of-service ratemaking issues in complaint proceedings regarding CPS tier rates, and should require local franchising authorities to adopt the same approaches in assessing the reasonableness of basic tier rates in cost-of-service cases. Second, when the Commission reviews local franchising authorities' decisions on basic tier rates, it should not give those decisions any "deference" on questions of ratemaking methodology. It should instead review the decisions for conformity with ratemaking principles developed by the FCC and, if necessary, apply those principles de novo.

## III. THE COMMISSION SHOULD ADJUST ITS PROPOSED METHODOLOGY FOR HANDLING CHANNEL ADDITIONS AND DELETIONS

In the Third NPRM, the Commission discusses several options for adjusting permitted benchmark rates when channels are added to or deleted from a regulated tier, and tentatively concludes that its third alternative is preferred. (¶¶ 139-143). Under that alternative, cable operators are required to pass through changes in actual per-channel programming costs resulting from adding or deleting a channel. Remaining costs, however, are assumed to change in accordance with the Commission's benchmark data. This means that adding a new channel results in lower per-channel rates (not counting programming costs) while deleting a channel results in higher per-channel rates. Continental believes that the intended result of the Commission's approach is that system operators will be made whole for programming cost increases (in the case of channel additions), but will share the presumed economies of scale (embodied in the benchmark data) in non-programming costs with subscribers. However, in practical operation the Commission will not achieve that goal, and will provide deficient incentives to cable operators, unless the methodology is modified.

### A. Per-channel Price Adjustments Should Not Affect Unchanged Tiers, Nor Seek to Micro manage Permissible Margins for Added Programming

The first problem with the Commission's preferred methodology is the effect it has on the price of tiers which are unchanged by the addition or deletion of program services. Under the Commission's proposal, basic service rates would increase if a channel is deleted from a CPS tier. They would also increase if a new service were added to a CPS tier at a programming cost which exceeds the marginal decrease on the benchmark curve. Continental submits that the national reaction to rate restructuring on September 1 is a good indication of public response to using basic service rates to subsidize CPS tier programming charges. Continental therefore submits that the adjusted per-channel rate should be applied only to the tier affected by the change.

Even if the Commission intends to maintain an allegiance to "tier neutrality" regardless of this policy consequence, the Commission's proposed formulation does not contain any mechanism to reflect the fact that, for almost all CPS tiers, penetration is less than 100%, and for new tiers is often substantially less. In such cases, the reduction in per-channel non-programming costs would be spread among all subscribers, but the higher per-channel programming rates would only apply to the portion of subscribers that subscribe to the

CPS tier, potentially leading to significant under-recovery of new programming costs.

The solution to this concern is to modify the per-channel programming cost adjustment to apply solely to the affected tier. With this modification, the Commission's intent -- a pass-through of programming cost changes and a sharing of economies of scale on other per-channel costs -- will be accomplished without further burdening tiers which are unaffected by the change in programming.

The Commission properly recognizes (n. 244) the need to provide an operator with some margin on any additional programming added to the system, in order to encourage the creation and launch of new networks. The mechanism proposed by Continental contains a margin which is already internal to the benchmark rates. That margin alone may not be compensatory. However, Continental is also proposing a streamlined recovery of the costs to upgrade capacity, as described in Section III.B. below. If both adjustments are accepted, there would be no need to provide an additional markup, or to deal with the difficult issues raised in n. 244. But under any accounting, Continental does not believe there is any basis for distinguishing between retransmission consent signals and other program services, as the Commission has suggested in that note.

Like other program providers, retransmission consent stations utilize cable plant and cable operators invest the capital and bear the expense of delivering the signals to subscribers. If broadcasters are to be treated as program suppliers, the incentives to add a broadcast signal must be the same as exist for the addition of any other programmer. Otherwise, broadcasting will forever need a regulatory cushion to insure carriage. The note further suggests that broadcaster-owned satellite channels should be lumped with retransmission consent for analytical purposes. However, such second channels -- such as ESPN2 or FX -- are indistinguishable from satellite cable networks. Here, too, the Commission's regulatory scheme for cable should create the same incentives as exist for any other service. Otherwise, the Commission could inadvertently create a carriage market with structural biases against broadcast retransmission.

Nor is there any need to distinguish between advertiser supported and fee supported program suppliers. Most cable networks already combine advertiser and fee support. An operator's ability to develop the third-party revenue stream available from advertising on insertable networks depends largely on its own willingness to develop a local sale force and business among local advertisers. Development of such third-party revenue streams should be encouraged by the Commission, because they reduce upward pressure on subscriber rates. An automatic offset from any local advertising sales will simply force more cost pressures onto subscriber rates.

### B. Channel Additions Involving Capital Expenditures Should Result in an Upgrade Adjustment

Continental believes the Commission is appropriately concerned with developing streamlined approaches to cost-of-service showings, expecially in those instances where technical upgrades and rebuilds will expand consumer choices. As the Commission has recognized, the existing benchmark methodology fails to account for channel additions undertaken as a result of system upgrades.[4/] As an example, an upgrade from 450MHz to 550 MHz would produce a significant shortfall under the Commission's formula, as shown in the following Exhibit. Under this example, the benchmarks produce only $0.93 per subscriber for an upgrade requiring $2.11 per subscriber to cover depreciation and an 11.25% return.

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4/ A "system upgrade" in this context is any channel addition that is accomplished by expending capital funds to upgrade the capacity of the system, as opposed to simply activating channels on existing "spare" capacity.

**EXHIBIT A:**

**REPRESENTATIVE UPGRADE ANALYSIS**

| | | Col. A Pre-Upgrade | Col. B Post-Upgrade |
|---|---|---|---|
| 1 | Total Activated Channels | 60 | 77 |
| 2 | Regulated Channels | 45 | 55 |
| 3 | Satellite Channels | 30 | 40 |
| 4 | Unregulated Channels | 15 | 22 |
| 5 | Regulated Channels (%) | | 71.43% |
| 6 | Subscribers | | 20,000 |
| 7 | Capital Required for Upgrade | | $3,420,000 |
| 8 | Capital Attributable to Regulated Channels [Line 7*Line 5] | | $2,442,857 |
| 9 | New "Regulated" Capital/Subscriber [Line 8/Line 6] | | $122 |
| 10 | Franchise Life (Years Remaining) | | 10 |
| 11 | Overall Return on Rate Base | | 11.25% |
| 12 | Annual Depreciation/Subscriber [Line 9/Line 10] | | $12.21 |
| 13 | First Year Return on New Investment/Subscriber [(Line 9 - 0.5*Line 12)*Line 11] | | $13.05 |
| 14 | **TOTAL FIRST YEAR CAPITAL COSTS FOR NEW INVESTMENT/SUBSCRIBER** | | **$25.27** |
| 15 | Maximum Permitted Rate/Channel/Month/Subscriber (Benchmark Formula) | $0.5035 | $0.4337 |
| 16 | Number of Regulated Channels [Line 2] | 45 | 55 |
| 17 | Unadjusted Monthly Revenue/Subscriber [Line 15*Line 16] | $22.66 | $23.85 |
| 18 | Programming Cost/Channel/Subscriber/Month | $0.1119 | $0.1119 |
| 19 | Programming Cost/Subscriber/Month [Line 18*Line 16] | $5.04 | $6.15 |
| 20 | Monthly Non-Programming Revenues/Subscriber [Line 17-Line 19] | $17.62 | $17.70 |
| 21 | Annual Non-Programming Revenues/Subscriber [Line 20*12] | $211.48 | $212.41 |
| 22 | **Annual Revenues/Subscriber Available for Upgrade costs w/o Upgrade Charge [Line 21 Col. B-Line 21 Col. A]** | | **$0.93** |
| 23 | First Year Capital Costs for New Investment/Subscriber [Line 14] | | $25.27 |
| 24 | First-year Capital Costs/Subscriber/Month [Line 23/12] | | $2.11 |
| 25 | **First Year Capital Costs/Subscriber/Channel/Month (UPGRADE CHARGE) [Line 24/Line 2]** | | **$0.0383** |
| 26 | UNADJUSTED MAXIMUM PERMITTED RATE [Line 15] | | $0.4337 |
| 27 | **ADJUSTED MAXIMUM PERMITTED RATE/MONTH [Line 25+Line 26]** | | **$0.4720** |

NOTES:

1. The figures in this chart are based on a plant upgrade from 450 MHz to 550 MHz, using costs developed for Continental's internal budgeting and forecasting purposes.

2. The monthly programming costs per subscriber per channel in the pre-upgrade system bear the same relationship to the maximum permitted charge as is reflected in the example contained in Note 252 of the Third Notice of Proposed Rulemaking. It is assumed that the per-channel monthly programming costs remain unchanged after the upgrade.

3. As the invested capital is depreciated over the ten-year franchise life, the return requirement will decline. This effect can be dealt with in one of two ways. First, the upgrade charge could be recalculated each year to reflect the lower undepreciated capital balance. Second, the charge could be "levelized" so that it would not change over the 10-year period.

Unless cable operators have reasonable means to recover the costs of upgrades under the benchmark system, however, upgrades will only be made if the system operator is prepared to undertake a full-blown cost-of-service showing. This will inevitably have a chilling effect on decisions to upgrade systems at a time when investment in communications infrastructure is both needed and desired.

Continental believes it would be practical to allow operators to make a highly abbreviated showing of incremental upgrade costs when adding channels in connection with a system upgrade. This abbreviated cost showing would allow the calculation of an "upgrade charge" to be added to the benchmark rates in effect before the upgrade. The purpose of this "upgrade charge" would be to allow the cable operator to be made whole, in regulated rates, for the costs of system upgrades that might not be fully reflected in the benchmark formula.

Continental proposes that the new per-channel per-subscriber rates in the case of an upgrade be calculated in two steps. First, the operator would calculate the rates that would apply under Continental's proposed formula (as discussed in Section III.A. above). Second, the per-channel per-subscriber cost of the upgrade would be added -- up to a limit -- to those rates to reflect the unique costs of the upgrade itself.

The cost of the upgrade would be determined using the following factors:

(a) the amount of capital (and capitalized interest and expenses) involved in an upgrade;[5]

(b) the remaining life of the franchise or the expected economic life of the new investment, whichever is shorter;

(c) the new (post-upgrade) number of activated channels on the system; and

(d) the number of subscribers to basic and satellite tier services.

The calculation would be as follows:

Using the capital invested (a) and the expected life of the upgrade (b), the operator would calculate a total annual capital cost of the upgrade. (A return on investment would be calculated using the rate of return established by the Commission for cost-of-service showings). This annual capital cost would be converted to a monthly amount, then divided by the number of channels (c), and, again, by the number of subscribers (d).[6] This would result in a per-channel per-subscriber monthly

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5/ The capitalized expenses might include, for example, the extraordinary maintenance costs often incurred during the temporary period that both the old and new systems are "up and running" immediately prior to the full cut-over to the new system.

6/ This figure could be adjusted to reflect the fact that fewer than all customers subscribe to the CPS tier, as discussed in Section III.A. above, if the upgrade does not affect quality of basic service.

"upgrade" charge. The exhibit illustrates how this charge would be calculated. In the example, an additional $0.0383 would be added to the benchmark rate.

Under Continental's proposal, operators would have the option of making this streamlined cost-of-service showing in connection with any voluntary upgrade involving expenditure of capital. This showing would not depend upon whether the upgrade was part of a franchise agreement or was separately approved by the franchising authority. However, as a cross-check on the reasonableness of upgrade investments which are not required by franchise, Continental suggests that only upgrades resulting in economies of scale would be entitled to this recommended streamlined treatment under benchmark regulation. Thus, the streamlined cost-of-service showing would only be available for voluntary upgrades to justify final per-channel per-subscriber rates that are lower than pre-upgrade per-channel per-subscriber rates. If an operator believes that the circumstances of a particular upgrade justify an increase in per-channel per-subscriber rates, a full cost-of-service showing would be required.

## IV. THE COMMISSION SHOULD ALLOW AN ADJUSTMENT TO BENCHMARK RATES TO REFLECT THE COST OF UPGRADES REQUIRED BY FRANCHISING AUTHORITIES

Finally, Continental submits that the Commission should allow cable operators "external cost" treatment to reflect the costs of system upgrades required by local franchising authorities. (¶¶ 153-54). These costs are plainly "external" to the cable operator's own activities under any reasonable standard, and there is no reason to believe that the costs of system upgrades required by any particular franchising authority will be reflected in any way in the GNP-PI-based rate adjustments permitted under the Commission's regulatory scheme.

Failure to allow required upgrade costs to be passed on to subscribers would create irresistible incentives for local franchising authorities to require upgrades without regard to market demand for, or subscriber interest in, the services and service enhancements the upgrades would make possible. In Continental's experience, franchising negotiations are most reasonable when both sides understand the effect on subscriber rates. Franchise authorities then have an incentive to require only those upgrades that, in their best judgment and within statutory constraints, subscribers will actually view as cost-justified. Unlike the treatment of voluntary upgrades recommended by Continental, there should be no *a priori* limit on the external recovery of costs of system upgrades required by franchise.

Continental submits that the cost of required upgrades must be recovered over the shorter of the economic life of the newly placed plant or the remaining life of the franchise.

Without such a ruling by the Commission, local franchising authorities have an incentive effectively to deny recovery of such upgrade costs by requiring their recovery over an unreasonably long period of time. Such discretion, if misapplied, could easily stymie system upgrades and frustrate national communication policy.

Continental further recommends that such external treatment should be available not only for benchmark adjustments, but as a streamlined adjustment to subsequent cost-of-service cases.[7/]

## CONCLUSION

For the reasons stated above, Continental submits that (a) the Commission should permit cable operators to justify rates on any regulated tier using the cost-of-service methodology without regard to the methodologies used on other regulated tiers, subject to Commission review of allocations and overall return; (b) the Commission should make binding determinations on all significant ratemaking policy issues affecting regulated cable rates, and preempt decisions by local franchising authorities that do not conform to federal guidelines; (c) the Commission should adopt Continental's modified methodology for calculating the impact, under the benchmark approach, of changes

7/ See Reply Comments of Continental Cablevision in MM Docket 93-215, September 14, 1993 at 26.